

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE CONSENT ORDER

<b>IN THE MATTER OF:</b>  <b>DOUG &amp; DAN SCHMITZ</b> <b>FACILITY #59174</b>  <b>OSCEOLA COUNTY, IOWA</b>	<b>ADMINISTRATIVE CONSENT</b> <b>ORDER</b> <b>NO. 2014-AFO- 16</b>
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**TO: Doug & Dan Schmitz**  
**68 Lakeview Drive**  
**Slayton, MN 56172**

### I. SUMMARY

This Administrative Consent Order (Order) is entered into between Doug and Dan Schmitz and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of Iowa's requirements pertaining to animal feeding operations and manure control. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions or response regarding this Order should be directed to:

**Relating to technical requirements:**

Cindy Martens  
IDNR Field Office #3  
1900 N. Grand Gateway North, Suite E17  
Spencer, IA 50022  
Ph: (712)262-4177  
Fax: (712)262-2901

**Relating to legal requirements:**

Randy Clark, Attorney II  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: (515) 281-8891

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Attn: Randy Clark

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**II. JURISDICTION**

This Order is issued pursuant to Iowa Code §455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code §455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Doug and Dan Schmitz own a swine confinement operation (Nursery 3030 Farm 3; Department Facility #59174) located in the SW¼ of the SE¼ of Section 36, T98N, R39W (Harrison Township), Osceola County, Iowa (hereinafter, Schmitz operation). The operation has a capacity of 8,000 head of nursery pigs (800 animal units) and utilizes an outside concrete formed structure for manure storage. The Schmitz Operation has had an approved manure management plan since 2009.

2. Treven Howard owns and operates a commercial manure service, Northwest Manure Management, Inc. (hereinafter collectively, NMM). According to Department records, Treven Howard is the manager of and a commercial manure service representative for NMM. In addition to Treven Howard, Travis Perry and Brandon Ahrenstorff were listed as commercial service representatives for NMM at the time of events leading to the issuance of this Order. The certifications for NMM as a commercial manure service (CMS #1598), and for Treven Howard (#CMSR 8888), Travis Perry (#CMSR 11506) and Brandon Ahrenstorff (#CMSR 14169) as commercial manure service representatives, were not valid between March 1, 2013 and September 16, 2013.

3. On the morning of May 14, 2013, a neighbor drove by the Schmitz operation and noticed manure flowing from a manure tanker parked near the cement manure storage structure. The neighbor proceeded to the facility and found Brennen Krogman sleeping in the tractor. The pump had been running and overfilling the tanker for quite some time according to the neighbor. Manure was flowing around the tank, between the confinement buildings and southward into an adjacent field in the direction of a nearby creek. The neighbor and his hired man woke Mr. Krogman, and the pump and tractor were turned off. The neighbor telephoned FO3 at 10:35 a.m. to report the spill and asked if the Department had been notified. FO3 staff responded that the Department had not been notified and obtained directions to the Schmitz operation from the neighbor.

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4. FO3 staff arrived at the Schmitz operation at approximately 11:00 a.m. on May 14, 2013 and found the tractor, pump and agitator on site. The manure tanker and application tractor were not present. Treven Howard and Brandon Ahrenstorff were at the site and identified themselves as owners of NMM. When asked what happened they responded that one of their employees, Brennen Krogman, had been loading the tanker and that something had plugged the pump and he couldn't turn it off. They reported that the pump had a capacity of 1,500 gallons per minute but did not state the duration of the release. FO3 staff observed the manure flow path and estimated that many thousands of gallons had been released. Treven Howard and Brandon Ahrenstorff admitted that they had not reported the release to the Department. Mr. Howard and Mr. Ahrenstorff left the site while FO3 staff walked the facility perimeter to look at the situation. Manure pooled the entire perimeter of the cement tank, several inches deep in many places. The manure had flowed to the west between the confinement buildings and it had also flowed to the south through the yard and into the crop field to the south. The manure was still flowing to the south towards the creek located on the south edge of the property.

5. At 11:55 a.m. on May 14, 2013, FO3 staff left a telephone message for Treven Howard, directing him to pump the pooled manure back into the storage structure or into a manure application tanker. He was also instructed to build an earthen dike to stop the manure flow to the creek and to disk the pooled manure into the field, scraping up as much manure as possible around the buildings and yard. FO3 staff left the site at about noon in an effort to find Treven Howard as he stated previously that the company was applying manure nearby for another facility. The manure application equipment and applicators were located a few miles south of the Schmitz operation, applying manure from the Brad Harms confinement operation (Department Facility #59474). The applicators were Brennen Krogman and Travis Perry. One of the tractors and tanks had broken down in the field and they were going to continue to utilize the other tractor with two manure tanks. The tractor and two tanks that were in operation did not have any signage identifying the commercial manure service name or certification numbers. FO3 staff checked with the Department's Des Moines office and learned that NMM's commercial manure service certification and the commercial manure service representative certifications for Treven Howard, Travis Perry and Brandon Ahrenstorff had all expired on March 1, 2013. Brennen Krogman had never been certified as a manure applicator. All NMM personnel claimed they were supervising Brennen Krogman, but he was not in sound and sight distance of these persons while working at the Schmitz site and this supervisory exemption did not apply because the

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certifications for all NMM employees had lapsed. FO3 staff directed all NMM personnel to stop applying manure until they were certified.

6. At 12:35 p.m. on May 14, 2013, FO3 staff returned to the Schmitz operation and found no one present, but the pump, hose and tractor had been removed from the site. There were now 3 areas of flow in the field, flowing southward at the rate of 1 foot per minute. The manure was about 0.2 miles from the creek. Concerned that the manure flow was not being addressed, FO3 staff contacted Doug Schmitz by telephone and explained the urgency of the situation. Mr. Schmitz did not express concern, merely stating that NMM should respond. FO3 staff attempted to contact Treven Howard by phone at 12:35 p.m. and again at 1:05 p.m. to ask when he was coming to stop the manure flow and start the cleanup. Both calls went directly to voicemail. FO3 staff then located a NMM employee who contacted Treven Howard by radio; Treven Howard returned the calls at 1:15 and 1:23 p.m., reporting that he was going to "collect the correct equipment to begin the cleanup." At 1:45 p.m. Brennen Krogman and Travis Perry arrived at the Schmitz facility and stated that they would be "babysitting" the site. They had no equipment with them. At 1:50 p.m. they left the site and several minutes later an unidentified person arrived with a bobcat and began placing berms in the field to stop the manure flow. The manure had flowed about 8 feet towards the creek during the hour that FO3 staff waited for NMM to respond. Doug Schmitz had instructed the applicators not to disk in the manure as that would ruin the corn that was starting to emerge. FO3 staff again called Treven Howard at 2:15 p.m. and, when he did not answer his phone, reminded him on his voicemail that NMM was not to operate until all commercial manure service representatives were certified.

7. On May 15, 2013, FO3 staff spoke with Treven Howard; he stated that NMM personnel "pulled out last night and didn't haul any more manure, not one drop. All equipment is unhooked now and is located back in Lake Park."

8. Department records reveal that Brennen Krogman was certified for the first time as a commercial manure service representative on September 16, 2013. On the same date, the certifications of Trevan Howard, Travis Perry and Brandon Ahrenstorff were renewed.

#### **IV. CONCLUSIONS OF LAW**

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1. Iowa Code §459.103 requires the Environmental Protection Commission (Commission) to adopt rules related to animal feeding operations. The Commission has done so at 567 IAC Chapter 65.

2. Iowa Code subsection 459.311(1) and 567 IAC 65.2(3) specify the minimum manure control requirements for confinement feeding operations, and requires total retention of all manure produced in the confinement structures between periods of manure application. The foregoing facts establish a violation of these provisions.

3. 567 IAC 65.3(6) requires a confinement feeding operation that is required to submit a manure management plan to use a certified manure service for the land application of manure. The foregoing facts establish that this requirement was violated.

**V. ORDER**

THEREFORE, the Department hereby orders and Doug and Dan Schmitz consent to do the following:

1. Comply with all manure control and application requirements.
2. Pay an administrative penalty of \$2,500.00. The penalty shall be paid to the Department within 30 days of the date the Director signs this Order.

**VI. PENALTY**

1. Iowa Code §§455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day for each violation of water quality laws.

2. Iowa Code §455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; 567 IAC Chapter 10. Pursuant to these provisions the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty. The administrative penalty is determined as follows:

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a. **Economic Benefit.** The Department does not have evidence that Doug and Dan Schmitz saved money by hiring an uncertified commercial manure service. Therefore, an amount is not assessed for this factor.

b. **Gravity of the Violation.** One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time as the most equitable and efficient means of resolving the matter. The manure applicator certification program was put in place to educate manure applicators on how to properly transfer, transport and land-apply manure, and how to properly respond to a manure spill. Handling manure without proper training/certification increases the risk of a manure application or a manure spill degrading the environment as evidenced by the release in this case. Hiring an uncertified commercial manure service threatens the integrity of the regulatory program because the services are less likely to obtain and maintain certification if they are hired without being certified. The failure to retain manure at the operation until it was properly loaded, transported and land-applied threatened to harm the environment. Therefore, \$1,000 is assessed for each of the two violations, resulting in a total of \$2,000.00 for this factor.

c. **Culpability.** By virtue of owning a confinement feeding operation for at least 4 years, Doug and Dan Schmitz should have been fully aware of the requirement to hire a certified commercial manure service. Therefore, \$500.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This Order is entered into knowingly by and with the consent of Doug and Dan Schmitz. By signature to this Order, all rights to appeal this Order or any part thereof are waived by Doug and Dan Schmitz.

**VIII. NONCOMPLIANCE**

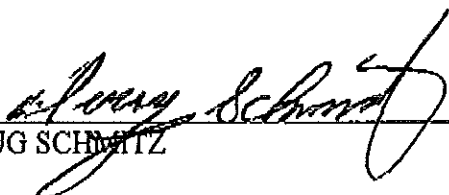
Compliance with section V. ORDER of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties pursuant to an

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administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code §455B.191.

  
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CHUCK GIPP, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 30<sup>th</sup> day of  
June, 2014.

  
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DOUG SCHMITZ

Dated this 18 day of  
June, 2014.

  
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DAN SCHMITZ

Dated this 18 day of  
June, 2014.

Field Office 3(Cindy Martens); Randy Clark; Ken Hessenius; EPA; VIII. D.1.a, D.2.d, D.4

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
RESEARCH REPORT

REPORT OF RESEARCH BY  
JAMES H. HARRIS, JR.  
AND  
JAMES H. HARRIS, JR.

1. Title of Research  
2. Name of Researcher

3. Date of Research  
4. Name of Institution

5. Name of Supervisor

6. Name of Institution

7. Name of Institution

8. Name of Institution

9. Name of Institution

10. Name of Institution

11. Name of Institution